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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. 2672/2004

New Delhi this the 3rd day of September, 2008

HON'BLE MR. JUSTICE M. RAMACHANDRAN, VICE CHAIRMAN (J)

Smt. Krishna Devi,
W/o late Sh. Chaman Singh,
R/o DDA MIG Flat No. 121.
Pocket A-1, Sector-7,
Rohini, Delhi-85.

(By Advocate Shri G.D. Bhandari)

Versus

Union of India through

1. Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi.
2. The Director General of
Civil Aviation,
Technical Centre,
Opposite Safdarjung Airport,
New Delhi.
3. The Secretary,
UPSC,
Shahjahan Road,
New Delhi. ... Respondents.

(By Advocate Shri H.K. Gangwani)

O R D E R

Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J).

A difference in the opinion recorded by the two members Bench has resulted in the matter being placed before a third Member, and the Chairman had nominated me. The attendant circumstances could be briefly noted as hereunder.

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2. By an order dated 06.11.2003, the Government had informed Mr. Chaman Singh, Assistant Communication Officer, in the Ministry of Civil Aviation that the President, after taking into consideration, all relevant aspects, including the departmental proceedings, had agreed with the advice of the UPSC, that a penalty of 10% cut in his pension for a period of one year required to be imposed on him. On the date of the order, he had retired from service. This is under challenge in the O.A.

3. On 17.03.2008, Hon'ble Mrs. Chitra Chopra, Member (A) had held that in matters of disciplinary proceedings, the Tribunal was not to assume the role of appellate authority unless there was mala fides present or denial of opportunity. Since none was found, she was of the opinion that no interference was warranted.

4. Hon'ble Judicial Member Mr. Shanker Raju, however, was of the opinion that as several points had been urged, and since the order did not deal with all such aspects, it could not have been acceptable to him. It may also be relevant to mention that by the time such orders had come to be passed, the applicant had passed away and his wife had been brought, on record. Learned Member had observed that as there was no finding recorded in the disciplinary proceedings as to presence of 'a grave misconduct' and since it was a condition precedent for exercise of right to the President under Rule 9 of the CCS (Pension) Rules, 1962, the penalty proposed could not be sustained. It has also been observed that the President being the competent disciplinary authority, an agreement with the advice of UPSC amounted to non-application of mind in the absence of any reasons recorded. Therefore, the order, according to him, deserved to be set aside.

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5. The order dated 17.03.2008 would indicate the term of difference.

It is,

“...although the impugned order is based on the finding and advice of the UPSC as to the 'grave misconduct' on the part of the applicant, whether the fact that the finding of 'grave misconduct' not having been specifically recorded in the disagreement note would vitiate the impugned order.”

6. On the basis of certain allegations, the deceased applicant had been subjected to disciplinary action. The inquiry authority was of the opinion that the charges were not proved. However, the disciplinary authority differed from such opinion and had issued a notice to the applicant, as required by the rules, requiring him to come up with objections against the disagreement as noted. Thereafter, matter had been placed before the UPSC.

7. By annexure A-3 dated 10.10.2003, the UPSC had opined that Article-I, Article-II and Article-III of the charge sheet is proved. By Paragraph 4 of the order, the Commission held as following:-

“In the light of their findings as discussed above, and after taking into account all other facts relevant to the case, the Commission consider that the charges proved against the CO constitute grave misconduct on his part and the ends of justice would be met in this case if a penalty of 10% cut in the pension for a period of one year be imposed on Shri Chaman Singh, the CO. They advised accordingly.”

When under Rule 9 of the CCS (Pension) Rules, the President is conferred with rights of withholding a pension when the pensioner is found guilty of grave misconduct and negligence, the mandatory requirement is that the UPSC shall be consulted before final orders are passed. It is solely with the jurisdictional power of the Union Public Service Commission in such cases to examine the files by themselves for

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rendering an opinion whether or not there is grave misconduct present. It appears that the opinion as above was given in the said context.

8. I had heard the counsel. I am of the view that even if in the disagreement note (in the present case) such a specific word had not been used, the opinion of the UPSC, on the basis of their assessment of the situation, could not have been possible to be on any defined area. UPSC is to be deemed as conferred with absolute freedom and privilege in making their comments, which has to be gatherable from the files. The detailed discussions as could be seen from the order shows that they were conscious of the situation.

9. In the above view, I do not think it was necessary, therefore, to interfere with the orders to any extent. I agree with the view taken by the Member (Administrative). Original Application will stand dismissed.



(M. RAMACHANDRAN)
VICE CHAIRMAN (J)

'SRD'